

EXHIBIT A
TO NOTICE OF REMOVAL

Sent By: HP LaserJet 3100;

408;

Dec-30-04 15:36;

Page 3

DEC-30-04 10:15 From:

T-987 P.04/09 Job-529

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Nikon Inc., a New York corporation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

eBay Inc., a Delaware corporation

FOR COUNTY USE ONLY
PARA USO DE LA CORTEJAN - 4 2005
12:15
GA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Santa Clara County Superior Court
191 N First Street
San Jose, CA 95113-1090CASE NUMBER:
(Número del caso)

104CV033187

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael G. Rhodes (116127)

(858) 550-6000 (858) 550-6420

COOLEY GODWARD LLP

4401 Eastgate Mall

San Diego, CA 92121

DATE: December 20, 2004

(Fecha)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

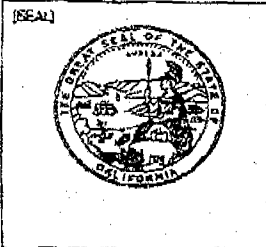
NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): *Nikon Inc., a New York Corporation*

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 418.20 (defunct corporation) ☐ CCP 418.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. January 1, 2004)

SUMMONS

Legal
Solution
CA PlusPage 1 of 1
Code of Civil Procedure §§ 412.20, 465

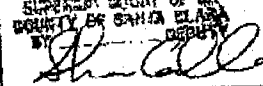
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Dec-30-04 15:36;

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Michael G. Rhodes (116127) JAMES R. PATTERSON (211102) COOLEY GODWARD LLP 4401 Eastgate Mall San Diego, CA 92121 TELEPHONE NO.: (858) 550-6000 FAX NO.: (858) 550-6420 ATTORNEY FOR: eBay Inc.		FOR COURT USE ONLY ENDORSED) FILED Dec 30 '04 CLERK SUPERIOR COURT OF CA COUNTY OF SANTA CLARA DEPUTY 
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113-1090 BRANCH NAME: Superior Court - Downtown		
CASE NAME: eBay Inc. v. Nikon Inc.		104CV033187 JUDGE: DEPT.:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)		

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collisions (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxics tort (20) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial post-judgment judicial supervision

3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☐ is ☒ is not a class action suit.

Date: December 29, 2004

James R. Patterson (211102)

 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.

Form Approved for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2003)

CIVIL CASE COVER SHEET

BY FAX

Legal
Solutions
Co. Plus

Page 1 of 2
 Cal. Rules of Court, rules 201.8, 1800-1812,
 Standards of Judicial Administration, § 13

Sent By: HP LaserJet 8100;

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T-987 P.05/09 Job-529

(ENDORSED)
FILED

DEC 30 '04

NOTED
JUL 2 2005
CLERK OF COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY *Shirley Cull* DEPUTY

COOLEY GODWARD LLP
MICHAEL G. RHODES (116127)
JAMES R. PATTERSON (211102)
4401 Eastgate Mall
San Diego, CA 92121
Telephone: (858) 550-6000
Facsimile: (858) 550-6420
Email: rhodesmg@cooley.com

Attorneys for Plaintiff eBay Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

EBAY INC., a Delaware corporation,

Plaintiff,

v.

NIKON INC., a New York corporation.

Defendant.

No. 104CV033187

COMPLAINT FOR

- (1) BREACH OF CONTRACT
(2) COMMON COUNT
(MONEY HAD AND RECEIVED)
(3) QUANTUM MERUIT/UNJUST
ENRICHMENT

DEMAND FOR JURY TRIAL

Plaintiff eBay Inc. ("eBay") alleges as follows:

COMMON ALLEGATIONS

- Based in San Jose, California, and incorporated under the laws of the State of Delaware, eBay is the world's leading online marketplace venue where users can offer new or used goods for sale or purchase goods from others. eBay's website, www.ebay.com, contains interactive services through which millions of listings are posted by millions of eBay users.
- eBay is informed and believes, and based thereon alleges, that defendant Nikon Inc. ("Nikon") is a New York corporation that conducts business within the State of California and the County of Santa Clara. As alleged herein, the contract at issue in this case was entered into, in whole or material part, within the County of Santa Clara.

COOLEY GODWARD LLP
ATTORNEYS AT LAW
SAN FRANCISCO

444143 v2/SD
88-0021DOC

1.

COMPLAINT FOR BREACH OF CONTRACT

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CIVIL LAWSUIT NOTICESuperior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113CASE NUMBER: **104CV033187****READ THIS ENTIRE FORM**

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet, and a copy of this Civil Lawsuit Notice, and you must file written proof of such service.

DEFENDANTS (the person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, in the clerk's office of the Court, within 30 days of the date the Summons and Complaint were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: www.sccsuperiorcourt.org/civil/rule1toc.htm
- Rose Printing, 49 N. First St., San Jose (408-293-8177)

For other local information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a Case Management Statement (Judicial Council form CM-110) at least 15 calendar days before the CMC. You or your attorney must appear at the CMC. You may ask to appear by telephone - see Local Civil Rule B.

Your Case Management Judge is: Neal A. Cabrinha DEPT: 10

The first CMC is scheduled as follows: (Completed by Clerk of Court)
Date: MAY 03 2005 Time: 3:45pm Dept.: 10 Unlimited

The next CMC is scheduled as follows: (Completed by party if the first CMC was continued or has passed)
Date: _____ Time: _____ Dept.: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed ADR Stipulation Form (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x 2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

3. Each year since 2002, eBay conducts a highly successful and popular convention known as "eBay Live!." The 2003 eBay Live! convention was held between June 26-29, 2003 in Orlando, Florida. The convention featured a variety of events, speakers, keynotes, presentations and an exhibitor hall. eBay Live! has emerged as an important educational, networking and marketing experience for eBay users, sellers, and vendors who seek to take advantage of the tremendous network effect that eBay's online trading community represents.

4. eBay Live! 2003 was sponsored by various major companies seeking to generate enhanced visibility within the eBay user community, starting with the approximately 10,000 event attendees. These sponsorships broke down as follows:

Name of Sponsor	Type of Sponsorship	List Price
UPS	Title Sponsor	\$500,000
IBM	Premier Sponsor	\$250,000
Nikon	Premier Sponsor	\$250,000
Sun	Member Sponsor	\$100,000
Schwartz	Member Sponsor	\$100,000

5. In connection with the pre-event negotiations between the parties, eBay agreed to reduce the list price of a Premier Sponsorship for Nikon from \$250,000 to \$100,000. eBay did this in an effort to generate goodwill for Nikon and the event.

6. In consideration for being a Premier Sponsor, Nikon received extensive publicity within the eBay Live! 2003 convention and related events and associated media collateral. This included, for example (and without limitation), being listed on the cover of the 2003 Community Conference Guide, receiving a preferred location within the exhibitor hall for its event booth, signage entitlements in the event locale, being featured in web-based marketing for the event, having the Nikon logo used in email communications regarding the event, and being listed as one of three sponsors (along with UPS and IBM) on the first interior page of the event Passport. Nikon actively participated in the event, conducting two classes on its products. Nikon produced a slide show that was used during the event's closing gala. Nikon had a featured item for sale at

1 the event store. In short, Nikon negotiated for and obtained a very prominent sponsorship at eBay
2 Live! 2003 and used that sponsorship to conduct the foregoing promotional activities.

3 7. Nikon has refused to pay eBay the Premier Sponsorship fee. Accordingly, eBay
4 brings this action to recover its damages.

5 **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

6 8. eBay incorporates by reference as though set forth in full herein the allegations of
7 paragraphs 1 through 7 inclusive, of this Complaint.

8 9. In or about May 2003, eBay and Nikon entered into an express oral contract
9 pursuant to which Nikon agreed to become, and did become, a Premier Sponsor for eBay Live!
10 2003 at the list price of \$250,000, which was reduced by eBay to \$100,000 during the parties'
11 negotiations.

12 10. At all times material hereto, eBay performed , or was excused from performing,
13 each and every obligation imposed on it under the parties' express contract.

14 11. At all times material hereto, Nikon received the benefits of its eBay Live! 2003
15 sponsorship and has failed, and continues to refuse, to pay eBay any money whatsoever therefor.

16 12. As a direct and proximate result, eBay has been damaged in the amount of
17 \$100,000 plus interest at the legal rate commencing on or about December 14, 2003 (the due date
18 on the November 14, 2003 invoice that eBay sent to Nikon) and accruing until the date of
19 judgment herein.

20 **SECOND CAUSE OF ACTION FOR COMMON COUNT**

21 **(MONEY HAD AND RECEIVED)**

22 13. eBay incorporates by reference as though set forth in full herein the allegations of
23 paragraphs 1 through 7, inclusive, of this Complaint.

24 14. Within the last two years Nikon became indebted to eBay in the sum of \$100,000
25 for money had and received by Nikon for the use and benefit of eBay.

26 15. No payment has been made by Nikon to eBay and there is now owing from Nikon
27 to eBay the sum of \$100,000 plus interest thereon at the legal rate commencing on December 14,
28 2003 (the due date on the November 14, 2003 invoice that eBay sent to Nikon) and accruing until

3.

1 DEMAND FOR JURY TRIAL

2 Plaintiff eBay Inc. hereby demands a jury trial.

3 Dated: December 29, 2004

4 COOLEY GODWARD LLP
5 MICHAEL G. RHODES (116127)
6 JAMES R. PATTERSON (211102)

7 By: 

8 James R. Patterson

9 Attorneys for Plaintiff
10 eBay Inc.

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PROOF OF SERVICE

I, the undersigned, declare as follows:

I am above the age of 18 years, a citizen of the United States and not a party to this action or proceeding. My business address is 350 South Grand Avenue, Suite 3600, Los Angeles, California 90071.

On February 2, 2005, I caused the foregoing document described as **NOTICE OF REMOVAL** to be served on the interested parties in this action in the following manner:

Michael G. Rhodes, Esq.
James R. Patterson, Esq.
Cooley Godward LLP
4401 Eastgate Mall
San Diego, CA 92121
Attorneys for Plaintiff

☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with U.S. Postal on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY FEDERAL EXPRESS:** To the address as specified above.

☐ **BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile to the number(s) as specified on the attached Service List.

☐ **BY HAND DELIVERY/PERSONAL SERVICE:** I directed a courier to personally deliver said document(s) to addressee as -specified on the attached Service List.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles, California, February 2, 2005.


Christy Barrett